

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ROBERT BROWN,

Petitioner,

v.

**ORDER**  
05-CV-517S

MICHAEL RABIDEAU,

Respondent.

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1. On July 25, 2005, Petitioner commenced this action seeking federal habeas relief under 28 U.S.C. § 2254.

2. On July 28, 2006, this Court referred this matter to the Honorable Hugh B. Scott, United States Magistrate Judge, for all proceedings necessary for a determination of the factual and legal issues presented, and to prepare and submit a Report and Recommendation containing findings of fact, conclusions of law, and a recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

3. In a Report and Recommendation filed on March 10, 2008, Judge Scott recommends that Petitioner's Petition for a Writ of Habeas Corpus be denied. No objections to the Report and Recommendation were received from either party within ten days from the date of its service, in accordance with 28 U.S.C. § 636(b)(1)(C) and Local Rule 72.3(a)(3).<sup>1</sup>

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<sup>1</sup>This Court notes that the copy of Judge Scott's Report and Recommendation sent to Petitioner at the Groveland Correctional Facility was returned as undeliverable, presumably due to Petitioner's release. Petitioner has not, however, provided this Court with an updated current address as required by the Local Rules. See Local Rule 5.2 (d) (requiring pro se litigant to furnish the court with a current address at which papers may be served and to update the address in writing). By operation of the Local Rule, it is presumed that Plaintiff received the Report and Recommendation. See Local Rule 5.2(d) (papers sent to a pro se litigant's last known address are assumed to have been received by the litigant).

4. This Court has carefully reviewed Judge Scott's Report and Recommendation, as well as the pleadings and materials submitted by the parties. After due consideration, this Court finds no legal or material factual error in Judge Scott's Report and Recommendation. This Court will therefore accept Judge Scott's Report and Recommendation in its entirety.

IT HEREBY IS ORDERED, that this Court accepts Judge Scott's March 10, 2008 Report and Recommendation (Docket No. 9) in its entirety, including the authorities cited and the reasons given therein.

FURTHER, that Petitioner's petition seeking federal habeas relief (Docket No. 1) is DENIED for the reasons set forth in the Report and Recommendation.

FURTHER, that because the issues raised in the petition are not the type that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, this Court concludes that Petitioner has failed to make a substantial showing of the denial of a constitutional right, 28 U.S.C. § 2253(c)(2), and accordingly, a Certificate of Appealability is DENIED and shall not issue.

FURTHER, that this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal would not be taken in good faith and leave to proceed as a poor person is therefore DENIED.

FURTHER, that the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: March 30, 2008  
Buffalo, New York

/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge